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In re Application of
QUAX et al.

U.S. Application No. 09/423,838

PCT No.: PCT/NL98/00259

Int. Filing Date: 11 May 1998

Priority Date: 12 May 1997

For: METHOD AND CONSTRUCT FOR
INHIBITION OF CELL MIGRATION

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on applicant's "PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)" filed 22 February 2000 in the above-captioned application. The required petition fee of \$1210.00 (37 CFR 1.17(m)) has been submitted.

BACKGROUND

On 11 May 1998, applicant filed international application PCT/NL98/00259 which claimed a priority date of 12 May 1997 and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 19 November 1998. A proper Demand was filed with the International Preliminary Examination prior to the 19th month from the earliest claimed priority date. As a result, the deadline for payment of the basic national fee was to expire 30 months from the priority date, or at midnight on 12 November 1999.

On 12 November 1999, applicant filed a transmittal letter requesting entry into the national stage in the United States, which was accompanied, inter alia, by: a copy of the international application and a preliminary amendment. The full Basic National Fee was not submitted.

On 16 February 2000, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF ABANDONMENT UNDER 35 U.S.C. 371 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to provide the full U.S. Basic National Fee by 30 months (37 CFR 1.495(b)(2)).

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required

by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

With regard to Item (1), the proper response was the submission of the payment of the basic national fee of \$840.00.

As to Item (2), the appropriate petition fee of \$1210.00 as required by 37 CFR 1.17(m) was submitted.

With regard to Item (3), applicant's statement that "entire delay in filing the 35 U.S.C. 371(c) requirement from their due date until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" satisfies the requirement of 37 CFR 1.137(b)(3).

As to Item (4), the terminal disclaimer is not required since the international application was filed after 08 June 1995.

A review of the application file reveals that, with the filing of the present petition and accompanying papers, a proper response has been submitted and all of the requirements of 37 CFR 1.137(b) for revival have been satisfied and revival is therefore appropriate.

CONCLUSION

All of the requirements of 37 CFR 1.137(b) have been met and applicant's petition to revive is GRANTED.

The application has an international filing date of 11 May 1998 under 35 U.S.C. 363 and a 35 U.S.C. 102(e) and 371(c) date of 22 February 2000.

This application is being returned to the United States/Elected Office for processing in accordance with this decision.



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